12 April Provide copies of Comment, also STAT w/attachment, to

DRAFT

Mr. Ronald K. Peterson
Assistant Director of Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Peterson:

This is in response to your April 2, 1979 Legislative Referral Memorandum as it relates to Title IV of S.2525, the National Intelligence Reorganization and Reform Act of 1978. As you may know, that legislation expired at the end of the 95th Congress and no substitute legislation has yet been introduced in this Congress. Thus, there is no way to know whether the provisions to which you refer have any validity at all at this time. As you also may know, the Special Coordination Committee of the National Security Council determined at its May 15, 1978 meeting, a determination the President subsequently approved, that CIA and the other intelligence entities effected by Titles IV, V and VI of the proposed intelligence charter legislation should negotiate directly with the SSCI staff and that these discussions would be coordinated and directed by the Director of Central Intelligence. At such time as these entity charters have been agreed upon between the appropriate entities and the SSCI, the proposed legislation would be brought back to the working group and the SCC for review. Subsequently, by his memorandum of July 15, 1978, the Assistant to the President for National Security Affairs acknowledged that OMB would be responsible for obtaining comments from agencies not represented on the Legislative Charters Working Group and should provide these comments to the agencies directly, or to the Working Group of which OMB is a member, as appropriate, to the SCC itself.

by noon Monday 16 April all

Consequently, your Referral Memorandum is at the same time premature and untimely, in that it relates to hypothetical statutory provisions, and presumptive, in that OMB is ignoring the SCC and Presidential guidance in this regard and attempting to assume the role assigned to the Charter Legislation Working Group as the initial point of discussion of issues relating to this legislation prior to requesting SCC review.

In any event, the following comments are pertinent to the issues, most of which appear to be of concern solely to OMB, raised in Appendix B, "Non-SCC Policy Issues," to your Referral Memorandum:

a. Your Paragraph 1, "Special Waivers" - Even as modified these provisions would not have usurped the "laws and authorities" of INS or IRS and there is no indication in your memorandum that those agencies have objected to it. The original language, providing as it did that CIA could only "request" a waiver of INS rules or "request" a non-public audit by IRS, did nothing for the authority of those entities to cooperate in this regard. The suggested replacement of "request" with "in order that" would affect no change in INS or IRS authority, would not be mandatory or directory, and would merely support any decision by those entities to perform their functions in this manner. The suggested change should not be withdrawn.

b. Your Paragraph 2, "Disposal of Property" - There are a multitude of circumstances where this Agency cannot rely upon GSA, which essentially does not exist overseas, or the Public Buildings Act, which requires public advertisement and bidding, etc., in order to dispose of property acquired in the course of its intelligence activities. Requiring "extraordinariness," Director certification, and return of proceeds in each and every transaction of this nature, no matter how insignificant, would involve a collossal waste of time and effort for all concerned. To avoid the threat of "circumvention" of the review and appropriations process alleged by OMB to accompany this authority, a fear that appears not to be shared by the SSCI, it may be acceptable to place a reasonable dollar ceiling on the use of this provision. The provision, however, should remain in Title IV.

c. Same Paragraph, "Disposition of Proprietary Income" - Similarly, the authority to utilize proprietary proceeds to sustain and operate associated companies should not be deleted. This authority is inherent in the authority to expend earned funds for "operational purposes" since a part of such purposes often is to maintain other entities directed toward the same objective. The fear of "circumvention" here, again apparently not shared by the SSCI, is overcome by the close scrutiny accorded these activities in the oversight process, and by the general requirement that proceeds of any sale, transfer, etc., of a proprietary not used for the operational purpose be returned to the Treasury.

d. Same Paragraph, "Contracts" - This provision would essentially clarify and continue existing Agency authority now contained in Section 3 of the CIA Act of 1949 which this legislation would repeal. Thus the references to E.O. 10789 and P.L. 85-804, both relating to the President's "national emergency" authorities, are inapposite and the section should be retained.

e. Your Paragraph 3, "Personnel Policy" - The amendments proposed by OMB and OPM are unnecessary, unwise, and would represent an unwarranted intrusion into Executive personnel policies. The provision as it stands is not directory or mandatory and it is absurd to believe, or infer, as a general proposition, that other entities would assign or detail, or this Agency would accept, employees who object to such assignments. These personnel transactions are not peculiar to CIA and occur all over government without the perjorative trappings that are suggested here. These amendments are objectionable.

f. Same Paragraph, "Appointment and Pay" - The Agency proposal was intended to provide complete personnel authority to CIA, certainly not a point of contention. If the DNI personnel authority under Section 114(m) is not so complete perhaps it, rather than the CIA authority, should be amended although it may be that the ambiguous entity to be known as the Office of the DNI will not require the same authority. The proposal was also intended to continue the current exemption of CIA from the various personnel regulatory statutes, an exemption that is very important from a security standpoint. Finally, the DCI exercises appointment authority beyond the GS 18 level and such a cap on appointments would constitute a reduction in current authorities. Further, as you note in the next comment, references to the general schedule are meaningless since CIA is not limited by that schedule. These provisions should not be amended as suggested.

g. Same Paragraph, "Position Limitations" - It is true that the language of this provision should be altered to refer to pay rates "equivalent to" those of the General Schedule and this amendment has been suggested previously to the SSCI. The second point, a limit to GS 18 levels, is addressed and rejected in subsection f. above. The comment here is inappropriate in any event since it would freeze CIA at the current number of positions compensated at Executive Schedule equivalent rates for all time. The amendment transferring positions to the Agency rather than to the Director is appropriate and also has been suggested previously to the SSCI. This provision should not be deleted.

h. Same Paragraph, "Transfer of Agency Employees to Competitive Civil Service" - This comment is based upon a misreading and misunderstanding of the intent of this provision. Again, it is not directory or mandatory but merely is intended to ensure that CIA employees who otherwise qualify for positions in other agencies are not disadvantaged because their experience and time in government has been acquired in the excepted service. This is no different than the various arrangements the Civil Service Commission has or has had with many "other merit systems," such as the Canal Zone, ERDA, NRC, TVA, the Peace Corps, VISTA, the Postal Commission, and the Foreign Service. The current authority cited from 50 U.S.C. 403(c) is insufficient for this purpose and, ironically, may serve to provide a benefit and standing to former employees who are terminated for security reasons that is not available to employees in good standing who may be interested in employment elsewhere in the government. This provision should not be amended.

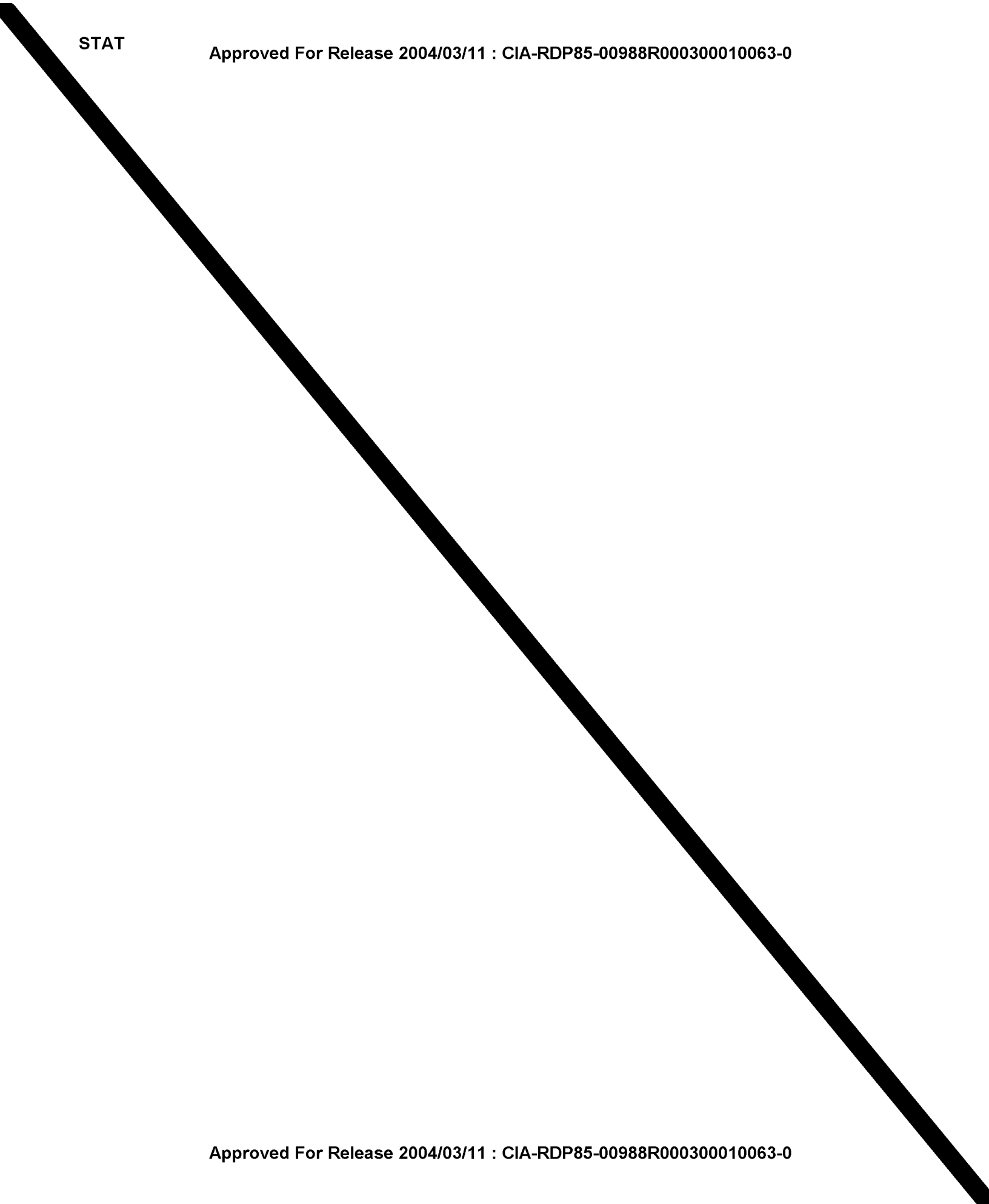
i. Same Paragraph, "Employee Termination Benefits" This provision has been deleted.

j. Same Paragraph, "Benefits and Allowances," - The comments as to the "comparability" language, and the suggested replacement language, do not take into account the difficulties caused by requiring conformity to civil and foreign service allowance schedules in circumstances where Agency employees are stationed in areas not occupied by employees of those services and thus where no such such exchedule exists. This is also a problem where the assignemnt is to a military facility, and in other situations where security considerations require that the prescribed mechanisms and procedures for payment cannot be followed. The "comparable to" language will ensure flexibility and near equivalency and should not be withdrawn. Similarly, the payment of additional benefits similar to those paid by the Foreign Service is necessary for operational reasons and will not be subject to abuse since the Director must determine this to be necessary in each case.

k. Your Paragraph 4, "Budgetary Authority and Procedures, Expenditure of Funds" - This comment is no longer relevant. The "extraordinary or emergency" language has been withdrawn and the provision in question will provide only that funds may be expended for purposes necessary to carry out the Agency's functions.

It is my understanding that Appendix A to this Referral Memorandum, which was not appended to the copy we received here, is a similar set of comments relating to intelligence policy matters as opposed to these administrative and management details. Depending upon the nature of the matters raised, this would conflict with the limitations expressed in the Referral Memorandum itself which describes OMB's roles as the identification of issues that "do not fall into the intelligence policy area," and would also appear to conflict with the spirit of Dr. Brzezinski's instructions last summer.

Frederick P. Hitz
Legislative Counsel



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